IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1627 OF 2007

Vijaykumar Agarwal ...Petitioner
Vs.
State of Maharashtra & Ors. ...Respondents

ALONGWITH
WRIT PETITION NO.1628 OF 2007

Birendrakumar Agarwal ...Petitioner
Vs.
State of Maharashtra & Ors. ...Respondents

ALONGWITH
WRIT PETITION NO.1629 OF 2007

Kavita P. Kapoor ...Petitioner
Vs.
State of Maharashtra & Ors. ...Respondents

Shri S.U.Kamdar i/by Shri G.B.Kedia for the Petitioner in all Petitions.

Shri P.I.Khemani, A.G.P for the State in all Petitions.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 26, 2007.

P.C.:

1. Rule. The learned A.G.P waives service for the Respondents. Considering the facts and circumstances of the case, taken up for hearing forthwith. As the facts of all the three cases are identical, for the sake of convenience, reference is made to the facts of the case in Writ Petition No.1627 of 2007.

2. Section 40(1) of the Wild Life (Protection) Act, 1972 (hereinafter referred to as the said Act of 1972)

reads thus:

> "40(1)Every person having at the commencement of this Act the control, custody or possession of any captive animal specified in Schedule I or Part II of Schedule II, [or animal article, trophy or uncured trophy derived from such animal or salted or derived skins of such animal or the musk of a musk deer or the horn of rhinoceros, shall within thirty days from the commencement of this Act, declare to the Chief Wild Life Warden or the authorized officer the number and description of the animal, or article of the foregoing description under his control, custody or possession and the place where such animal or article is kept".

Sub-section (2-A) of Section 40 reads thus:

> "40(2-A) No person other than a person having a certificate of ownership, shall, after the commencement of the Wild Life (Protection) Amendment Act, 2002 acquire, receive, keep in his control, custody or possession any captive animal article, trophy

or uncured trophy specified in Schedule I or Part II of Schedule II, except by way of inheritance".

3. Section 40A of the said Act of 1972 was brought on the Statute book by way of amendment. The said section granted immunity in those cases in which no declaration has been made under section 40(1) of the said Act of 1972 provided a declaration is made in such form, in such manner and within such time as may be prescribed.

4. A notification dated 18th April, 2003 was issued by Ministry of Environment and Forests by which the declaration of Wild Life Stock Rules, 2003 were brought into force from the date of publication of the said Rules in Government Gazette. The said Rules provide for a format of application under section 40A of the said Act of 1972. The Rules provide that application in prescribed format shall be made within a period of 180 days from the date of publication of the said rules. Therefore, a declaration as provided in sub section 1 of Section 40 the said Act of 1972 ought to have been submitted on or before 15th October, 2003. According to the case of the Petitioner, he applied on 12th January, 2004 to the second Respondent in the prescribed format

alongwith affidavit-cum-application for condonation of delay. The Deputy Conservator of Forests by communication dated 20th October, 2006 informed the Petitioner that the Application made by the Petitioner has been rejected in view of the said Rules of 2003 which required application/declaration to be filed on or before 14th October, 2003. By the said communication the Petitioner was informed that he was entitled to prefer an Appeal before the Chief Conservator of Forests (Wild Life), Mumbai. Accordingly, on 21st November, 2006 the Petitioner preferred an Appeal. By communication dated 03rd January/February, 2007, the Chief Conservator of Forests (Wild Life), Mumbai informed the Petitioner that his Appeal/Application has been disposed of as the Application before the second Respondent ought to have been preferred on or before 15th October, 2003.

5. The submission of the learned counsel appearing for the Petitioner is that the applicability of provision of section 5 of the Limitation Act, 1963 to the proceedings under the said Act of 1972 was not intended to be excluded and therefore, the Deputy Conservator of Forests could have condoned the delay in filing the application. The learned A.G.P. appearing for the Respondents supported the impugned order. He

has placed reliance on affidavit of the Deputy Conservator of Forests. He submitted that there was no provision of law under which delay could have been condoned and application filed by the Petitioner after 14th October, 2003 could not have been considered on merits.

6. On plain reading of the communication dated 03rd January/February 2007 issued by the Chief Conservator of Forests (Wild Life), Mumbai, it is obvious that the Petitioner was not heard on merits of the Appeal preferred by him. An order has been passed on the Appeal without giving an opportunity of being heard to the Petitioner. The consequences of order dated 20th October, 2006 passed by the Deputy Conservator of Forests were serious in the sense that if the said order attains finality, the Petitioner will have to deposit wild life articles/trophies in his custody with the authority. In my view, the Appellate Authority ought to have given an opportunity of being heard to the Petitioner on merits of the Appeal. As the Petitioner has not been heard, only on this ground, the order of the Appellate Authority is required to be quashed and set aside. The Appellate Authority will give an opportunity of being heard to the Petitioner and will decide all questions raised in the Appeal including the

question whether delay could have been condoned by the Deputy Conservator of Forests (Wild Life Division). It will be always open for the Petitioner to amend the memorandum of Appeal for incorporating additional grounds.

7. The learned A.G.P states that time of atleast six months be given to the Appellate Authority to decide the Appeal afresh on merits.

8. Hence, I pass the following order:

(i) The impugned order dated 03rd January/February, 2007 passed by the Chief Conservator of Forests (Wild Life), Mumbai on Appeal preferred by the Petitioner is quashed and set aside.

(ii) The Appeal preferred by the Petitioner on 21st November, 2006 is restored.

(iii) The said Appeal shall be heard and decided afresh by the Appellate Authority after giving an opportunity of being heard to the Petitioner. It will be open for the Petitioner to amend the memorandum of Appeal for adding grounds.

(iv) All contentions of the parties including the contention that the delay in filing application/ declaration could have been condoned are expressly kept open.

(v) The Appellate Authority will decide the Appeal finally on or before 31st December, 2007. Ad-interim relief granted on 08th March, 2007 by this Court will continue to operate till the disposal of the Appeal by the Appellate Authority.

(vi) It is made clear that in case the order passed by the Appellate Authority is adverse to the Petitioner, the ad-interim relief granted by this Court will continue to operate for a period of two weeks from the date of communication of the said order to the Petitioner.

(vii) Writ Petitions are partly allowed in above terms with no orders as to costs.

(viii) Parties and concerned Courts to act upon authenticated copy of this order.

JUDGE